



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 15, 2005 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Jimenez.

ROLL CALL

Present: COUNCIL MEMBERS Quirk, Jimenez, Halliday, Ward, Dowling, Henson
MAYOR Cooper
Absent: COUNCIL MEMBERS None

PRESENTATION Pride in Hayward Award

Mayor Cooper presented the November Pride in Hayward Award to the following Hayward residents: Luis Moreno, Dante and Sharon Manansala from the Glen Eden Neighborhood; Junior and Katherine Burton, Rogelio and Ligoria Fernandez from the Mt. Eden Neighborhood; and Purnima Prasad from the Southgate Neighborhood. She thanked each for taking pride in their homes and adding to the beauty of the City of Hayward.

PUBLIC COMMENTS

Henry Villalobos asked for Council assistance and an investigation related to an incident at Tennyson High School. Mayor Cooper recommended that this incident be reported to the principal of the school or the school district superintendent and the school board as the City has no jurisdiction over such incidents.

CONSENT

1. Approval of Minutes of the City Council Meeting of November 1, 2005

It was moved by Council Member Jimenez, seconded by Council Member Ward, and carried unanimously to approve the minutes of the City Council Meeting of November 1, 2005.

2. Resolution Adjusting the Employer Medical Contribution Rate for Employees and Certain Retirees of the Hayward Association of Management Employees

Staff report submitted by Employee Benefits Administrator Baldinelli,
dated November 15, 2005, was filed

It was moved by Council Member Jimenez, seconded by Council Member Ward, and carried unanimously, to adopt the following:

DRAFT

Resolution 05-135, "Resolution Adjusting Employer Contribution for Subject Members of the Hayward Association of Management Employees (HAME) Covered Under the Public Employees' Medical and Hospital Care Act"

3. Resolution Adjusting the Employer Medical Contribution Rate for Employees and Certain Retirees of the Hayward Police Officers Association

Staff report submitted by Employee Benefits Administrator Baldinelli, dated November 15, 2005, was filed

It was moved by Council Member Jimenez, seconded by Council Member Ward, and carried unanimously, to adopt the following:

Resolution 05-136, "Resolution Adjusting Employer Contribution for Subject Members of the Hayward Police Officers' Association Covered Under the Public Employees' Medical and Hospital Care Act"

4. Resignation of Aileen Matteson from the Downtown Business Improvement Area Advisory Board

Staff report submitted by City Clerk Reyes, dated November 15, 2005, was filed

It was moved by Council Member Jimenez, seconded by Council Member Ward, and carried unanimously, to adopt the following:

Resolution 05-137, "Resolution Accepting the Resignation of Aileen Matteson from the Downtown Business Improvement Area Advisory Board"

HEARINGS

5. Introduction of Density Bonus Ordinance

Staff report submitted by Neighborhood and Economic Development Manager Patton, dated November 15, 2005, was filed

Neighborhood and Economic Development Manager Patton presented the staff recommendation, defining the terms of the ordinance and indicating that State law requires that units made affordable to very low and low-income households maintain their affordability for at least thirty years. The City's proposed ordinance follows State law and will allow the City to impose specific procedures related to affordable units produced in accordance with the ordinance. She stated that the City has little discretion in the terms of the proposed ordinance, but does have the ability to conduct design and environmental review for developments, and incorporate density bonuses, incentives or concessions. Lastly, she reported that the Planning Commission held a public hearing without public comment.

Council Member Henson expressed his concern in allowing the State to usurp local authority by



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imposing this type of requirement on cities. In reference to the ordinance, he asked for clarification on the reduction of site development standards.

In response, Neighborhood and Economic Development Manager Patton reported that such standards might be parking ratio standards, onsite parking and tandem or uncovered parking. It is up to the developer to request a specific concession to the City. The City would need to make substantial findings in order to override the concessions. The final aim is to provide affordable units.

Council Member Halliday asked about the requirement for maintaining the low income as rentals for 30 years. It was noted by Neighborhood and Economic Development Manager Patton that the very low and the low income rentals or ownership are required to be affordable for thirty years. The moderate income is mostly likely to be ownership in a common interest development with no terms for affordability. In that instance, the City will be able to capture the difference in the market price and the subsidize price and a pro rata formula will be applied to share the appreciation.

Mayor Cooper opened the public hearing at 8:25 p.m.

Rosemary Obed, representing the Community Child Coordinating Council of Alameda County, stated that the Council is the State mandated childcare and resource agency and provides data in this regard. She described her experience working with the City of Hayward and in particular David Korth. She encouraged the Council to continue the discussion to encourage developers to utilize the density bonus for providing childcare facilities. Ms. Obed indicated that infant care was recently lost due to do the lack of funding. Working parents need affordable, quality child care, and licensed child care space only provides about half of what is currently needed. She reported that some parents pay more for child care than they do for housing. She urged continued efforts to provide this very important necessity.

Ellen Dektar representing Alameda County Local Investment and Childcare Project, housed with the Childcare Planning Council in Oakland, stated her office works to link child care with land use and transportation planning. She noted that there are some resources to help encourage this children care density bonus, both its usage and its implementation. She asked for feedback on this issue. She offered to work with the staff in this regard and to provide models and resources related to childcare facilities.

Council Member Jimenez commended staff for the presentation and the language of the ordinance that is consistent with the General Plan.

Mayor Cooper closed the public hearing at 8:32 p.m.

In regards to the moderate income units, Council Member Ward asked for further discussion. Neighborhood and Economic Development Manager Patton stated that the State requires that the funds be spent in the production of affordable housing and that is incorporated into the City ordinance and must be spent within a period of three years. The funds could be provided to non-profit developers who have experience in low- and moderate-income, affordable housing, and could be

provided as grants or loans.

Council Member Ward then moved the staff recommendation to approve the negative declaration and introduce the ordinance, seconded by Council Member Henson.

Council Members expressed their comments on allowing concessions and asked to what extent can the City use this ordinance to persuade a developer to utilize a particular concession and to what extent could the City partner with a developer such as a non-profit that could furnish the expertise to build a facility. City Manager Armas stated that this could be done, but it would largely depend on the level of a project that can be developed independent of the regulations. There are too many opportunities to deal with this issue.

Council Member Quirk commended the childcare advocates and commented on a recent experience in a developer offering a childcare facility. He was concerned with the incentives and the concessions that would modify the zoning code requirements. He urged all to contact legislators in this regard. Neighborhood and Economic Development Manager Patton provided such examples as setbacks, parking and mixed use developments in a neighborhood.

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to adopt the following:

Resolution 05-138, "Resolution Adopting the Negative Declaration and Approving the Density Bonus Ordinance"

Introduce Ordinance 05-_, "Ordinance Adding Article 19 to Chapter 10 of the Hayward Municipal Code Relating to Density Bonuses"

6. Eden Shores East -

- A. General Plan Amendment No. PL-2004-0184 – Request to Change the General Plan from Industrial Corridor to Medium Density Residential, Including Amendments to the South of Route 92 Specific Plan and Development Guidelines
- B. Zone Change No. PL-2004-0189 – Request to Change the Zoning from Light Manufacturing/Business Park Districts to Planned Development District
- C. Vesting Tentative Tract Map No. PL-2004-0190/Tract 7489 – Request to Create up to 139 Single-Family Residential and 122 Town Home Parcels
- D. Amendment to the Mount Eden Business and Sports Park Community Development Agreement

Hayward Oliver LLC, Owner, (Applicant/Owner) - The Property is Located in Eden Shores at the Intersection of Eden Shores Boulevard and Marina Drive.

Staff report submitted by Acting Planning Manager Patenaude, dated November 15, 2005, was filed

Acting Planning Manager Patenaude made the report describing the property. He pointed out the specific plan and noted that this proposal is to convert the 27.5 acres and the 1.6 acres from the business park area to medium density area use. The total site is a little over 29 acres, with a proposal to include



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139 detached homes and 122 condo units. He noted that the architecture includes a Craftsman's style, a Monterey style and the Regency style. He discussed some elements of the development agreement and what the applicant has offered to pay as part of the development agreement. Lastly, he recommended an additional condition as requested by the Fire Department to add Condition 66A to obtain clearance before grading.

In response to Council Member Jimenez's question regarding the reputation of Duc Housing, City Manager Armas reported that Duc Housing is not the builder, but the applicant. Standard Pacific has been the builder in past projects that Duc has purchased. Council Member Jimenez commented on the generation of property transfer tax for the city.

Referring to Exhibit E, Council Member Henson asked staff to comment on the units that are not proposed to have driveways. Staff noted that in the scale of this project, four parking spaces are generally considered adequate, but in this project the garages are accessed from the alleys and there are no driveways. There is a Condition of Approval for this portion of the project to provide additional parking, which would be shared parking across at the business park area at Marina Drive.

Acting Planning Manager Patenaude, in response to Council Member Henson's question, stated that the homes will be fitted with windows to withstand noise from the exterior traffic and railroads.

Council Member Halliday expressed her concern with the medium density housing. It was noted that this is a buffer between the business park and the single family residences. She felt that projects with homes the size of this project should be located near transit corridors or centers. She did not see this project as such. She asked about the shopping opportunities for the new residents and staff noted the suggested retail shopping that may occur. The closest shopping area is West Tennyson, but she thought new residents shopped at Union Landing.

Council Member Halliday also asked about Measure HH that was considered by the electorate in 1998. It was her understanding that the Measure included statements that this area was intended for single family homes for those working in the business park. She asked if the proposed changes to the open space designation need to be approved by the voters. City Attorney O'Toole stated that the property itself was not subject to the initiative. If it was subject to the initiative, it reserved rights for the Council to make revisions. Regarding her question on the inclusionary ordinance, it was noted that per the inclusionary ordinance, the affordable units will all be located in the multifamily portion of this project and thus 40% of that area will be affordable.

Lastly, Council Member Halliday asked about open space and access to the path of the Bay Trail and Acting Planning Manager Patenaude outlined the path through the current and proposed developments and noted that it is currently not open for public access.

Council Member Quirk noted that he spoke with the developer to gain further information. He asked for clarification on Condition of Approval #66A that the Fire Department is imposing. He asked where the numbering of the houses will be located and noted potential confusions with locating addresses.

Acting Planning Manager Patenaude pointed out where the addresses will be located and described the vehicular access to the alleys. In regards to the colors of the buildings, staff affirmed that the Planning Director would be authorized to approve the colors of the homes. Council Member Quirk also questioned the terms in Condition of Approval #20. He was concerned with guest parking when families host parties. City Manager Armas specified staff concerns with future developments that may occur in either of the business parks.

Council Member Dowling asked whether two new homeowners' associations will be initiated. Staff confirmed that there is currently one association already established and there will be two new ones. Council Member Dowling stated that he visited the site. He further expressed his concern regarding the requirement of the homeowners association to enforce a 24-hour limited parking. He felt that this would be too difficult to enforce. Staff noted that there are approximately 151 visitor parking spaces, which was more than what other developments have offered. He discussed noise issues from trains, ownership of the site, and the elevations of the townhouses. Council Member Dowling was disappointed that no large signs of the public hearing were posted on the site itself. Staff noted that approximately 500 homes were noticed of this hearing.

Mayor Cooper had some concerns for light industry in that area along with homes. A business park would be more compatible. She preferred to see some shopping or some retail, such as a better quality grocery store. She urged the developer to consider such.

City Manager Armas pointed out on the aerial map that a business park will be the only zoning designation. He noted that the applicant indicated an interest in replacing the business park designation to provide substantial retail. Staff advised the developer to withhold the application until the retailers are more specific and definitive.

Mayor Cooper opened the public hearing at 9:34 p.m.

Donald Wiggam spoke on behalf of himself and his father. He resides on Bal Harbor Street, just north of the project and commented on the noise impacts from aircraft over his home. He noted that he has previously spoken on noise impacts from aircraft flying overhead and cited the average number of aircraft impacting this neighborhood. He indicated that Hayward has the most noise from aircraft compared to other areas and distributed information. He noted from the noise study that aircraft noise was not addressed. He suggested noise mitigations such as insulation of Lorin Eden Elementary School, add disclosures about the runway at the time of sale, and fund a staff person to represent Hayward in dealing with the Port of Oakland. He noted that San Leandro was able to have the Port of Oakland insulate 200 homes.

George Adas lives at Eden Shores and commented on the noise from trains. He stated that the amenities need to be increased for the homeowners and additional recreational opportunities in the private parks. He asked that information be distributed. Lastly, he asked that consideration be made to provide housing for veterans.

Evelyn Cormier representing Save Open Space and the Hayward Area Planning Association's concerns related to the Eden Landing Ecological Preserve, which is next to Standard Pacific homes. At the time of the first development, she noted that it was designated to be a business park and would not generate issues, but with the change to a housing designation, there needs to be some protection to maintain the



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ecological preserve. She emphasized the importance to make good use of the land on that side.

In response to Council Member Halliday's concern in this regard, Acting Planning Manager Patenaude reported that there are barriers such as the railroad and the other projects, such as the 20- foot sound wall, that separates the wetlands from the area and the overpass. She confirmed that staff had not spoken with East Bay Regional Park District. Council Member Quirk cited the provision in the staff report to place the same restrictions that were placed on the previous development to keep pets from the preserve.

Linda Bennett stated that there was a reliance on the vote on Measure HH that east side was guaranteed to be a business park. She questioned previous comments made in this regard and thought that a specific plan, once voted on, needed to have voter approval to be changed. She asked if a new environmental impact report was prepared. Staff affirmed. She was concerned that the City is losing a lot of the mom and pop stores to big box stores. She noted that single family homes would be her preference as traffic is extremely impacted.

John "Jack" Smith, attorney for the project, spoke on behalf of Duc Housing, noting the monetary provision towards the development of the sports park. He reported on the efforts to develop the property as zoned with no success due to the economy. The 261 housing units will be affordable. He introduced the development team. He commended staff for making this an excellent project including the provisions for the development of the bay trails.

Joseph Fanelli, Chief Operating Officer of Duc Housing Partners, stated that Standard Pacific Homes will be the builder of this project as it was at Oliver West. He enumerated joint projects with Standard Pacific Homes. He also presented the efforts made to develop the business park. He reported that this proposal was presented to the homeowners on the west side. He commended staff and stated the proposed noise mitigations to address the train noise. He described the affordability of the homes. He outlined the amounts for school fees towards Lorin Eden and Mt. Eden High School and the contribution towards the new Burbank Elementary School. Mr. Fanelli addressed the comments regarding addresses made by Council Member Quirk. Lastly, he presented a visual simulation to show the architectural and landscaping aspects of the proposed development.

Michael Kating, Project Manager, responded to Council questions related to the affordable units, their size, bedroom quantity and the sound wall. He reported that about 200 residents attended the community meeting that was held in Union City. In response to Council Member Dowling's concerns about the preservation of the business park, Mr. Kating stated that his firm would bring in a commercial developer and partner for future development.

Council Member Halliday discussed Measure HH and the promises made to the voters in 1998. She stated that she had much concern with this substantial change. She wondered what guarantee the developer could provide and not return in the future to build homes on the remaining property currently designated for business park. She was concerned about the private park that includes a swimming pool and asked if it would be available to the residents in this new development. It was

noted that the park with the pool is available to the homeowners' association in that area and that there will be one homeowners' association for the single family homes and one for the townhouse developer. Each will have separate amenities. She was concerned with the lack of gathering areas for meetings and had hoped that there would be a good clubhouse or public meeting place as the weather is not always ideal.

Mr. Kating reported that this property has been listed with a prominent agency for the past five years with no interest. He noted that ultimately the Council will make the decision on the business park development. In response to the clubhouse, the developers chose to provide more outdoor amenities than indoor. Jack Smith reported that Duc Housing Partners has contacted the developer of the Hacienda Business Park, who is dedicated to building a good business park in that area.

In response to Council Member Ward's question on the amount of the money to build the new Burbank Elementary school and the amount that will be provided by Duc Housing Partners, City Manager Armas reported that the bonds presumed that there would be \$12 million dollars coming to the school district from the State. The Council was informed that the school district had established designated zones for schools and that both the Burbank and the school in the Stonebrae development are in the same zone, losing the opportunity for State bonds. The date for contribution will coincide with the date of the award of contract to build the school. Council will be informed on the final costs of the school as costs have escalated. Mr. Kating noted that the \$5 million is a firm commitment and the school fees will occur as development occurs.

Mayor Cooper closed the public hearing at 10:38 p.m.

Council Member Henson commented on the size of the project. He felt that the project fits the site, but urged some restrictions on roaming pets. He commented on the affordability and then moved the staff recommendation as listed on the agenda report. Council Member Jimenez seconded his motion.

Council Member Quirk reminded both the maker of the motion and the second to add Condition of Approval #66A to this motion, which requires the applicant to obtain clearance for unrestricted development for the subject site for either the California Regional Water Quality Control Board or the California Department of Toxics Substance Control or the Hayward Fire Department, prior to grading. Both Council Members Henson and Jimenez accepted this condition added to the motion. He agreed with the maker of the motion related to addressing the airport noise in the area. He empathized with Mr. Wiggam and suggested additional staff be added to attend the airport noise meetings. There was discussion on the staffing of a committee member as part of this motion, but it was not determined. Council Member Quirk agreed with the developer providing particular disclosures upon sale.

Council Member Dowling commended the high quality of the development and agreed with the density. He did not have any problems with the density and supported the business park. He felt that this development should have been discussed two years ago. He would be voting against the motion because of the process that was taken in approving this project.

Council Member Halliday explained the reasons that she would not be supporting the motion to approve the project. She noted that she reviewed the project with an open mind. She felt that the history of this area was important, and that the decision by the voters to approve the measure was



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based on false advertising. She stated that what was promised will not occur. The sports park was built, but she hoped that the business park would be built, and she would have preferred single-family homes. This will not be a walking community as there is no transit available. Lastly, she felt that the Council is not living up to the spirit of the specific plan and was disappointed that jobs did not come to fruition. She hoped that the project turns out well.

Council Member Quirk agreed with Council Member Dowling regarding the process and stated that it is important for Council to review a project early. He commended staff and the developer, but wished that the Council would have been invited to the developer's community meeting.

Mayor Cooper commented in favor of the project. She felt that this is an appropriate place for housing, but that there is a need for bus transportation in this area. She suggested AC Transit be contacted to increase bus schedules. This is like finishing the area and it will help change the face of Hayward along with the improvements that will occur in the Mission Corridor. The business park may develop as the economy improves. Lastly, she suggested a decent food market and some ancillary businesses for residents to shop.

City Manager Armas discussed the zoning and the business park designation and recalled the proposed Glenborough real estate project that was reviewed by the Council. It would have been modeled after the Redwood Shores office buildings, but it did not occur. He pointed out the current vacancies of office space throughout the area and described several recent projects that were a part of a process that had been brought before the Council.

It was moved by Council Member Henson, seconded by Council Member Jimenez, and carried by the following roll call vote to adopt the following:

Resolution 05-139, "Resolution Adopting the Mitigated Negative Declaration and Amending the General Policies Plan Map for a Portion of the Oliver East Property in the South of Route 92 Specific Plan Area to Change the General Plan Land Use Designation from Industrial Corridor to Residential – Medium Density and Related Actions"

Introduce Ordinance 05-_, "An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Territory in Connection with Zone Change Application PL-2004-0189 Relating to the Oliver East Property"

Introduce Ordinance 05-_, "An Ordinance Authorizing Execution of Amendment to Mount Eden Business and Sports Park Community Development Agreement"

AYES: COUNCIL MEMBERS Jimenez, Quirk, Ward, Henson
MAYOR Cooper

NOES: COUNCIL MEMBERS Halliday, Dowling
ABSENT: COUNCIL MEMBERS None
ABSTAINED: COUNCIL MEMBERS None

LEGISLATIVE BUSINESS

7. Adoption of Ordinance Related to Zone Change for University Village – The property is located at 26528 Hayward Boulevard

Staff report submitted by City Clerk Reyes, dated November 15, 2005,
was filed

Mayor Cooper stated that this is the second opportunity to speak on this introduced ordinance. She opened and closed the public hearing 11:05 at p.m.

It was moved by Council Member Quirk, seconded by Council Member Ward, and carried to adopt the following:

Adopt Ordinance 05-14, “An Ordinance Amending the Zone District Map of Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Territory Located at 26528 Hayward Boulevard Pursuant to Zone Change Application No PL-2004-0627”

AYES: COUNCIL MEMBERS Jimenez, Quirk, Ward, Henson
MAYOR Cooper
NOES: COUNCIL MEMBERS Halliday, Dowling
ABSENT: COUNCIL MEMBERS None
ABSTAINED: COUNCIL MEMBERS None

COUNCIL REPORTS

There were no Council reports.



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ADJOURNMENT

Mayor Cooper adjourned the meeting at 11:07 p.m., with Council Member Dowling adjourning in memory of David Barker of the Turf Club, who passed away on November 9, 2005. A celebration of his life will be held at 3:00 p.m., November 19th at the Turf Club, 22519 Main Street, Hayward.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward